

REMARKS

The Patent Office objected to claims 3, 6-8, 13-19, and 23-29 because of incorrect numbering within these claims. Applicant has amended claims 3, 6-8, 13-19, and 23-29 to correct these informalities. Although the Patent Office did not object to claims 4 and 9, Applicant has also amended claims 4 and 9 to correct the numbering within these claims.

The Patent Office rejected claims 1-30 under 35 U.S.C. §102 (e) as being anticipated by Nashner (U.S. Patent No. 6,190,287). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 UPPQ 2d 1051, 1053 (Fed. Cir. 1987).

Regarding claim 1, Nashner fails to either expressly or inherently disclose quantifying a second actual performance metric of an individual carrying out the defined performance after the event occurrence. Nashner also fails to disclose determining a result of the event occurrence on the ability of the individual to carry out the defined performance based on the first and second actual performance metrics.

Nashner discloses a system and method for monitoring training programs prescribed to benefit a subject. Before training a subject, an assessment of the present capabilities of the subject is made and recorded. A specific training program is then created from the subject consisting of one or more tasks. During training, the number of tasks actually performed by the subject and the accuracy with which the tasks are performed are recorded and compared to benchmark data, wherein the benchmark data is obtained from the previous assessment or from performance by a defined reference group. The subject's motivation and the appropriateness of the training program is then determined based on the comparison of the number of tasks actually performed and the accuracy with which the tasks are performed with the benchmark data. However, Nashner fails to expressly or inherently disclose quantifying a second actual performance metric after the training (event occurrence) and determining a result of the event occurrence based on the first and second actual performance metrics. Therefore, claim 1 is allowable, and claims 2-9 are also allowable.

Regarding claim 10, as discussed above, Nashner fails to either expressly or inherently disclose quantifying a second actual performance metric of an individual carrying out the defined performance after the event occurrence and determining a result of the training. In addition,

Nashner fails to disclose the steps of defining a role and associating an individual having a possessed skill correlating with the required skill of the role and an actual skill level quantifying the possessed skill.

Referring to paragraph [0023] of Applicant's original disclosure and the language of claim 10, a role is associated with a required skill having a required skill level and requiring a defined performance. Nashner discloses comparing the subjects initial functional performance assessment data with performance and training compliance data derived from a reference population of individuals. As disclosed in col. 8, lines 65-67, "the reference population will consist of a group of normal individuals age-matched to the patient or a group of patients with similar diagnoses." However, the reference population disclosed by Nashner is not a role associated with a required skill having a required skill level and requiring a defined performance. Further, Nashner associates the subject with the reference population based on age or diagnoses rather than based on a possessed skill of the individual that correlates with the required skill of the role. Since Nashner fails to either expressly or inherently disclose at least the steps of defining a role associated with a required skill having a required skill level and requiring a defined performance, associating an individual having a possessed skill correlating with the required skill of the role, quantifying a second actual performance after the training, and determining a result of the training, claim 10 is allowable.

For at least the same reasons claims 1-10 are allowable, claims 11-30 are also allowable.

In view of the discussions above, claims 1-30 are allowable. Reconsideration is respectfully requested. If any issues remain, the examiner is encouraged to contact the undersigned attorney of record to expedite allowance and issue.

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW, AND IS ADDRESSED TO:

Examiner: Catherine M Colon Art Unit: 362 Fax: 703-872-9326

Jennifer Rush
Name of Sender
Jennifer Rush
Signature
July 15, 2003
Date of Transmission

Date: July 15, 2003

Attorney Docket: 1004-001

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:

Benjamin S. Withrow
Benjamin S. Withrow
Registration No. 40,876
P.O. Box 1287
Cary, NC 27512
Telephone: (919) 654-4520

Official

FAX RECEIVED

JUL 16 2003

GROUP 3600